No. 85-1385

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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1985

UNITED STATES OF AMERICA, PETITIONER

v.

GENERAL DYNAMICS CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

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The Solicitor General, on behalf of the United States, submits this supplemental memorandum in support of the petition pursuant to Rule 22.6 of the Rules of this Court.

On June 3, 1986, the Court entered its decision in *United States* v. *Hughes Properties, Inc.*, No. 85-554, holding that a gambling casino reporting its taxes under the accrual method of accounting may accrue as a deduction the jackpot amounts shown at year-end on the face of its progressive slot machines. The Court reasoned that Nevada State Gaming Commission regulations, which forbade the casino from "reducing the indicated payoff without paying the jackpot," operated "as a matter of state law" to fix the casino's liability (slip op. 8). "[T]hese jackpot liabilities were definitely fixed. A part of the machine's intake was to be paid out, that amount was known, and only the exact time of payment and the identity of the winner remained for the future" (slip op. 10).

The situation in the present case is significantly different from that in *Hughes Properties*. As we indicated in our petition (85-1385 Pet. 4-5), respondent in the instant case seeks to accrue as a deduction "estimate[s] of its liability to employees who were assumed to have received medical care during the last three months of 1972, but who had not submitted claims, or whose claims had been submitted but not approved, as of that date." Thus, the employees' submission of claims and demonstration of coverage—preconditions whose satisfaction depended upon the diligence of the affected employees, as well as upon determinations whether the medical procedures were covered by the health plans, whether stipulated maximum charges had been exceeded, and whether the treatment was medically necessary—all stood as potential bars to respondent's liability at the close of the tax year.

Accordingly, we do not believe that the decision in *Hughes Properties* will control the outcome in the instant case, or that it will provide the lower courts with guidance on the important question whether taxpayers may accrue deductions for self-insurance plans based upon estimates from prior experience. We therefore again urge the Court to grant plenary review in the instant case.

Respectfully submitted.

CHARLES FRIED
Solicitor General

JUNE 1986